

Caroline N. Mitchell (#143124)
Stacy Monahan (#218942)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
Email: cnmitchell@jonesday.com
Email: smonahan@jonesday.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**PATRICK M. MCCOLLUM; IAN
SHAYNE DUNCAN; JOSEF
MICHAEL JENSEN; KENNETH E.
CAPOGRECO; DONNIE DACUS;
SCOTT FORREST COLLINS; KEVIN
COY ILOFF; DAVID SPOONER; and
GREGORY L. MOURLAND,
individually and on behalf of all others
similarly situated**

Plaintiffs,

v.

**CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION; OFFICE OF
COMMUNITY RESOURCES;
CALIFORNIA STATE PERSONNEL
BOARD; AVENAL STATE PRISON;
CALIFORNIA CORRECTIONAL
CENTER; CALIFORNIA
CORRECTIONAL INSTITUTION;
CALIFORNIA INSTITUTION FOR
MEN; CALIFORNIA INSTITUTION
FOR WOMEN; CALIFORNIA MEN'S
COLONY; CALIFORNIA MEDICAL**

Case No. C-04-3339 CRB

**SECOND AMENDED COMPLAINT AND
CLASS ACTION FOR CIVIL RIGHTS
VIOLATIONS, PERMANENT
INJUNCTION, DECLARATORY
JUDGMENT, AND DAMAGES**

DEMAND FOR JURY TRIAL

1 FACILITY; CALIFORNIA
2 REHABILITATION CENTER;
3 CALIFORNIA STATE PRISON, LOS
4 ANGELES COUNTY; CALIFORNIA
5 STATE PRISON, SACRAMENTO;
6 CALIFORNIA STATE PRISON,
7 SOLANO; CALIFORNIA SUBSTANCE
8 ABUSE TREATMENT FACILITY
9 AND STATE PRISON AT
10 CORCORAN; CALIPATRIA STATE
11 PRISON; CALIFORNIA STATE
12 PRISON, CENTINELA;
13 CHUCKAWALLA VALLEY STATE
14 PRISON; CORCORAN STATE
15 PRISON; CORRECTIONAL
16 TRAINING FACILITY; DEUEL
17 VOCATIONAL INSTITUTION;
18 FOLSOM STATE PRISON; HIGH
19 DESERT STATE PRISON;
20 IRONWOOD STATE PRISON; MULE
21 CREEK STATE PRISON; NORTH
22 KERN STATE PRISON; PELICAN
23 BAY STATE PRISON; PLEASANT
24 VALLEY STATE PRISON; R.J.
25 DONOVAN CORRECTIONAL
26 FACILITY AT ROCK MOUNTAIN;
27 SALINAS VALLEY STATE PRISON;
28 SAN QUENTIN STATE PRISON;
VALLEY STATE PRISON FOR
WOMEN; WASCO STATE PRISON;
KATHY MENDOZA-POWERS;
KATHLEEN PROSPER; WILLIAM
SULLIVAN; M.E. POULOS; DAWN
DAVISON; JOHN MARSHALL;
MARTIN VEAL; GUILLERMINA
HALL; ROBERT AYERS; SCOTT M.
KERNAN; THOMAS L. CAREY;
DERRAL ADAMS; GEORGE
GIURBINO; J. SALAZAR;
MADELENE A. MUNTZ; A. K.
SCRIBNER; ANTHONY KANE;
STEVE MOORE; MATTHEW
KRAMER; T. FELKER; DERRICK
OLLISON; ROSANNE CAMPBELL;
LEA ANN CHRONES; RICHARD
KIRKLAND; JAMES A. YATES;
ROBERT J. HERNANDEZ; MIKE
EVANS; STEVEN ORONSKI;
GLORIA HENRY; P. L. VASQUEZ;
WILLIAM ELKINS; MAELEY TOM;
ANNE SHEEHAN; SEAN HARRIGAN;
FLOYD SHIMOMURA; RON
ALVARADO; RODERICK Q.
HICKMAN; JEANNE S. WOODFORD;
RONALD BARNES; BARRY SMITH;

MERRIE KOSHELL; ARNOLD ORTEGA; AL BONILLA; SABRINA JOHNSON; OCTAVIO PERAZA; JORGE SARELI; TIP KENDAL; ITO NEINHUIS; K.J. WILLIAMS; CHAPLAIN STEWART; CHAPLAIN RICHIE; CHAPLAIN VALENZUELA; and ARNOLD SCHWARZENEGGER

Defendants.

This complaint is filed by Patrick McCollum and by Ian Shayne Duncan, Josef Michael Jensen, Kenneth E. Capogreco, Donnie Dacus, Scott Forrest Collins, Kevin Coy Iloff, David Spooner and Gregory L. Mourland (collectively “Plaintiffs”). Plaintiffs all adhere to the Wiccan/Pagan faiths.¹ Plaintiffs Duncan, Jensen, Capogreco, Dacus, Collins, Iloff, Spooner and Mourland (collectively the “Wiccan/Pagan Inmates”), state claims on their own behalf and on behalf of the class alleged herein. Plaintiffs complain as follows:

PRELIMINARY STATEMENT

1. This action arises from the violation of plaintiffs’ civil rights under the United States and California Constitutions, and under federal and state law. This action is brought by Patrick McCollum, a state-approved volunteer Wiccan/Pagan California correctional institution chaplain, and by Wiccan/Pagan inmates in the custody of the California Department of Corrections and Rehabilitation (“CDCR”) on behalf of a class of all prison inmates who have practiced or have desired to practice Wiccan/Pagan faiths in the CDCR since 1998. Plaintiffs

¹ The term “Wiccan/Pagan” as used in this complaint means faith groups consisting of Wiccans, Goddess worshippers, Neo-Pagans, Pagans, Norse Pagans (and any other ethnic designation), Earth Religionists, Old Religionists, Druids, Shamans, Asatrus, and those practicing in the Faery, Celtic, Khemetic, Gardnerian, Church of All Worlds, Reclaiming, Dianic, Alexandrian, Iseum of Isis, Reconstructionist, Odinist or Yoruban Traditions, and other similar nature-based faiths. Plaintiff McCollum is informed and believes that CDCR personnel and others use the term “Wiccan” to refer to several of such faiths, including without limitation the Khemetic, Santerian, Asatru and Odinist traditions, as well as Wicca as evidenced by the fact that Plaintiff McCollum was originally designated as the CDCR “Wiccan Chaplain” to serve inmates in several of these traditions and has provided chaplaincy services for inmates from such traditions. Plaintiff is informed and believes that, in other contexts, the term “Pagan” is used to designate the above-listed faiths generally.

1 seek relief from ongoing religious discrimination and denial of constitutionally protected religious
2 rights and freedoms.

3 2. This action also arises under Title VII and other federal and state laws because
4 defendants have engaged in employment discrimination against Plaintiff McCollum.

5 3. Defendants have created and carried out a denominational hiring system for prison
6 chaplains that on its face, and as applied, discriminates and classifies job applicants and positions
7 on the basis of religion. That is, there are civil service classifications by religious denomination
8 for “Protestant Chaplain,” “Catholic Chaplain,” “Jewish Chaplain,” “Muslim Chaplain,” and
9 “Native American Spiritual Leader” (the “Five State-Sanctioned Faiths”). The state has no other
10 chaplain positions. Chaplains who practice Wiccan/Pagan religions, or any other non-sanctioned
11 religion (for example, Hindu, Buddhist, or Mormon) are *automatically disqualified* from
12 obtaining any position as a state chaplain, regardless of the individual’s skill as a spiritual advisor
13 or training as an interfaith religious leader.

14 4. Upon information and belief, defendants selected and have continued to endorse
15 the Five State-Sanctioned Faiths for which they would hire chaplains based on the content of the
16 faiths and not based on objective criteria that are uniformly applied to all faiths in administering
17 the chaplaincy program. For example, upon information and belief, the religions for which
18 chaplains are hired are not a function of inmate populations because there are more Wiccan/Pagan
19 inmates than Jewish inmates.

20 5. By adopting and carrying out a state hiring system that favors the Five State-
21 Sanctioned Faiths, and elevates them, on a subjective basis, over others, defendants violate the
22 constitutional prohibitions against government establishment of religion. The Five State-
23 Sanctioned Faiths are provided with paid chaplain positions, with the benefits and privileges that
24 status provides; other faiths are provided only with volunteer chaplain opportunities or none at all,
25 based on criteria that are not objective and content-neutral. In effect there is a two-tier system:
26 the privileged Five State-Sanctioned Faiths on the one hand and all other faiths on the other,
27 without any objective, non-content-based basis for making the distinction. This chaplain civil
28

1 service classification system sponsoring only five faiths and the policies and practices it generates
2 throughout the CDCR is referenced herein as the “Five State-Sanctioned Faiths Policy.”

3 6. The two-tier system inherent in the Five State-Sanctioned Faiths Policy denies
4 Wiccan/Pagan clergy equal protection under the law. State-employed chaplains are provided
5 benefits and privileges no volunteer chaplain could ever obtain. Wiccan/Pagan clergy, who are
6 only permitted by defendants to serve as volunteers, if at all, are denied funding for religious
7 needs and are denied the greater access to inmates granted to Five State-Sanctioned Faiths clergy,
8 with no objective justification related to, for example, inmate population religious preferences or
9 the security needs of the prisons. In addition, because they are volunteers, Wiccan/Pagan clergy
10 lack the same benefits and protections that state employees have against harassment and
11 discrimination in the workplace.

12 7. The two-tier system inherent in the Five State-Sanctioned Faiths Policy creates a
13 lack of resources and denial of access, which denies Wiccan/Pagan inmates the ability to
14 participate in essential religious ceremonies and perform religious rites mandated by their faith.
15 Chaplains of the Five State-Sanctioned Faiths who are hired are often hostile to Wiccan/Pagan
16 religions, yet are called on to oversee Wiccan/Pagan religious life because of the absence of
17 Wiccan/Pagan chaplains. In many cases, the Five State-Sanctioned Faiths Chaplains discriminate
18 against the Wiccan/Pagans when forced into such roles and prioritize the needs of the adherents
19 of their own faiths above the needs of the Wiccan/Pagans. Upon information and belief,
20 defendants know that this occurs and take no adequate steps to correct such behavior and fail to
21 screen potential hires for such biases. The overall policy of defendants results in a substantial
22 burden on Wiccan/Pagan inmates’ free exercise of religion. In addition, the Five State-
23 Sanctioned Faiths Policy creates a culture of discrimination against Wiccan/Pagan inmates, who
24 are deprived of the benefits and protections enjoyed by inmates practicing state-sponsored
25 religions.

26 8. Plaintiffs seek a declaration that the chaplain civil service classification system
27 sponsoring only the Five State-Sanctioned Faiths, without objective criteria for selection of the
28 religions that are entitled to paid chaplains, is unconstitutional. Plaintiffs seek injunctive relief to

1 require defendants to abolish the current chaplain civil service classifications and conform
 2 chaplain hiring policies and inmate religious accommodation policies to policies based on
 3 objective criteria that include, at least in part, inmate population religious preferences and
 4 willingness and ability of chaplains to serve in a religiously pluralistic environment, as well as
 5 objectively fair allocation of resources. Plaintiffs seek injunctive relief to prohibit defendants
 6 from adopting policies and customs that disparately treat minority religions based on non-
 7 objective criteria. The injunctive relief sought requires defendants to accommodate minority
 8 religion inmates' religious exercise in a manner that does not result in imposing a substantial
 9 burden on their religious exercise, unless it is in furtherance of a compelling governmental
 10 interest and unless defendants use the least restrictive means of furthering that compelling
 11 governmental interest. Any such restrictions should be no more restrictive than those applied to
 12 inmates practicing more common religions. Plaintiff McCollum seeks recovery in the forms
 13 enumerated in the prayer for relief for discrimination in employment and for the other violations
 14 referenced herein.

15 **JURISDICTION AND VENUE**

16 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 28
 17 U.S.C. § 1343, Section 706(f) of Title VII of the Civil Rights Act, and 42 U.S.C. §§ 2000bb-1(c),
 18 2000cc-2(a) and directly under the United States and California Constitutions. The Court has
 19 jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.
 20 Injunctive relief is authorized under Fed. R. Civ. P. 65. The Court has supplemental jurisdiction
 21 over the state law claims pursuant to 28 U.S.C. § 1367. Plaintiffs bring this action pursuant to 42
 22 U.S.C. § 1983, 42 U.S.C. §§ 2000cc *et. seq.* (RLUIPA), and Title VII of the Civil Rights Act, and
 23 claims all available attorneys' fees and other remedies available under these laws.

24 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that the unlawful
 25 policies, practices, actions and omissions alleged herein were and are committed by agents and
 26 employees of the State of California in this district and throughout the state.
 27
 28

INTRADISTRICT ASSIGNMENT

11. This action is properly filed in the San Francisco Division of the United States District Court for the Northern District of California pursuant to Civil Local Rules 3-2(c) and (e) because a substantial part of the events giving rise to the claims set forth in this Complaint occurred in Marin County, which is part of the San Francisco Division.

PARTIES**Plaintiffs**

12. Plaintiff Patrick M. McCollum is a resident of California and has been ordained as Wiccan clergy since 1972, as Wiccan/Pagan clergy since 1987, and as an Odinist clergy. Plaintiff McCollum is a member of the American Correctional Association, the American Correctional Chaplains' Association, and the Association of Chaplains in California State Service. He has served as a national Wiccan/Pagan religious advisor for the Federal Bureau of Prisons in Washington, D.C. and has advised staff at the Pentagon on religious accommodation issues. Plaintiff McCollum also has served as the Wiccan/Pagan religious advisor for fourteen (14) state correctional systems, including the state of California. Since 2004, he has served as the national liaison between the American Academy of Religion ("AAR") and correctional authorities in the United States. In that capacity, he has coordinated annual meetings in conjunction with the AAR's annual meetings, during which AAR scholars and the heads of the religious programs from various states and the federal correctional system, as well as others such as the President of the American Correctional Chaplains Association, confer about religious accommodation issues, among other things. In conjunction with those meetings, Plaintiff McCollum has coordinated the development of what is now being called the National Correctional Chaplaincy Directors' Association, for which he serves as Program Chair. Plaintiff McCollum has facilitated in-service training for correctional staff regarding Wiccan/Pagans at various correctional institutions in California and Colorado. Plaintiff McCollum is knowledgeable in many Wiccan/Pagan traditions and is recognized as a leader in the Wiccan/Pagan Community. As such, Plaintiff McCollum is sought out to advise institutions on Wiccan/Pagan practices and accommodation of these practices in correctional settings. Plaintiff McCollum has lectured at a number of colleges

1 and universities and has served for over thirty years within various intrafaith and interfaith
2 organizations, and has served as an expert witness on religious issues involving Wiccan/Pagans.
3 Plaintiff McCollum currently serves as a faculty member of Cherry Hill Seminary, a Wiccan
4 seminary whose central office is in Vermont, and is the Director of the Cherry Hill Seminary
5 Chaplaincy Program. He is also the National Coordinator for the Lady Liberty League Prison
6 Ministry Program (formerly the Lady Liberty League Prison Issues Task Force) of Circle
7 Sanctuary, Madison, Wisconsin, and he has been teaching annual seminars on prison chaplaincy
8 at the Pagan Leadership Institute in Ohio since 2000. Plaintiff McCollum has been serving as a
9 volunteer Wiccan chaplain for the California Department of Corrections since at least 1997.
10 Plaintiff McCollum is disqualified from applying to any paid chaplain position in the California
11 Department of Corrections and Rehabilitation solely because his religion is not one of the Five
12 State-Sanctioned Faiths.

13 13. Plaintiff Ian Shayne Duncan is a prisoner currently incarcerated in California State
14 Prison-Sacramento, located in Represa, California. Mr. Duncan has been a practicing member of
15 the Wiccan/Pagan faith for nearly 20 years. His beliefs are sincerely held. Mr. Duncan has been
16 incarcerated in five (5) or more state prisons in California, including but not limited to, California
17 State Prison-Sacramento, North Kern State Prison, California Correctional Institute at Tehachapi,
18 High Desert State Prison, and California State Prison - Los Angeles County.

19 14. Plaintiff Josef Michael Jensen is a prisoner currently incarcerated in California
20 State Prison-Sacramento, located in Represa, California. Mr. Jensen is a practicing member of
21 the Wiccan/Pagan faith. His beliefs are sincerely held. Mr. Jensen has been incarcerated in three
22 (3) or more state prisons in California, including but not limited to, California State Prison-
23 Sacramento, North Kern State Prison, and Salinas Valley State Prison.

24 15. Plaintiff Kenneth E. Capogreco is a prisoner currently incarcerated in California
25 State Prison-Sacramento, located in Represa, California. Mr. Capogreco has been a practicing
26 member of the Wiccan/Pagan faith for several years. His beliefs are sincerely held. Mr.
27 Capogreco has been incarcerated at seven (7) or more state prisons in California, including but
28 not limited to, California State Prison-Sacramento, Folsom State Prison, Mule Creek State Prison,

1 North Kern State Prison, Pelican Bay State Prison, California Correctional Institute at Tehachapi,
2 and High Desert State Prison.

3 16. Plaintiff Donnie Dacus is a prisoner currently incarcerated at Avenal State Prison.
4 Mr. Dacus has been a practicing member of the Wiccan/Pagan faith and has done so most of his
5 life. His beliefs are sincerely held. Mr. Dacus has been incarcerated at two (2) or more state
6 prisons in California, including but not limited to, Avenal State Prison and Folsom State Prison.

7 17. Plaintiff Scott Forrest Collins is a prisoner currently incarcerated at San Quentin
8 State Prison. Mr. Collins has been a practicing member of the Wiccan/Pagan faith for several
9 years. His beliefs are sincerely held. Mr. Collins has been incarcerated at four (4) or more state
10 prisons in California, including but not limited to, San Quentin State Prison, California
11 Correctional Institute at Tehachapi, Chuckawalla Valley State Prison, and California Correctional
12 Center.

13 18. Plaintiff Kevin Coy Iloff is a prisoner currently incarcerated in Pleasant Valley
14 State Prison, located in Coalinga, California. Mr. Iloff has been a practicing member of the
15 Wiccan/Pagan faith for several years. His beliefs are sincerely held. Mr. Iloff has been
16 incarcerated five (5) or more state prisons in California, including but not limited to, California
17 State Prison-Sacramento, Folsom State Prison, Pelican Bay State Prison, Deuel Vocational
18 Institute, and Pleasant Valley State Prison.

19 19. Plaintiff David Spooner is a prisoner currently incarcerated at Salinas Valley State
20 Prison. Mr. Spooner has been a practicing member of the Wiccan/Pagan faith for several years.
21 His beliefs are sincerely held. Mr. Spooner has been incarcerated at two (2) or more state prisons
22 in California, including but not limited to, California State Prison-Sacramento and Salinas Valley
23 State Prison.

24 20. Plaintiff Gregory L. Mourland is a prisoner currently incarcerated at High Desert
25 State Prison. Mr. Mourland has been a practicing member of the Wiccan/Pagan faith for several
26 years. His beliefs are sincerely held. Mr. Mourland has been incarcerated at one (1) or more state
27 prisons in California, including, but not limited to High Desert State Prison.
28

1 21. The class that the Wiccan/Pagan Inmate Plaintiffs represent are all Wiccan/Pagans
2 who, are, or will be incarcerated at each of the Institutional Defendants, as that term is defined in
3 Paragraph 109.

4 **Defendants**

5 22. The CDCR is the successor-in-interest to the Youth and Adult Correctional
6 Agency (“YACA”) and the departments and boards within the agency, including the Department
7 of Corrections (“CDC”), which were reorganized into the CDCR on July 1, 2005. Reference to
8 the CDCR in this complaint is intended to include predecessors to the CDCR. The CDCR is the
9 parent agency of the Institutional Defendants and is responsible for managing the state’s adult
10 prison and parole systems. Upon information and belief the CDCR is the employer of all
11 chaplains serving in the correctional system.

12 23. The Office of Community Resources (“OCR”), or its successor within the CDCR,
13 administers, interprets, and formulates religious policy and procedures; acts as liaison between
14 the CDCR and major national, state, and local religious organizations; reviews chaplain selections
15 prior to appointment; and advises on the conduct of religious programs and in-service training for
16 chaplains. The OCR also formulates and administers policies and procedures for volunteer
17 activity by the community and staff and is responsible for collecting data for statistical reports
18 and dissemination. Reference to the OCR in this complaint is intended to include its predecessors
19 and successors. The OCR oversees each prison’s Community Resource Manager (“CRM”) or
20 Associate Warden of Operations (“AWO”), who are charged with overseeing religious
21 programming in the prisons. References to the CRM and AWO in this complaint are intended to
22 reference individuals with such job responsibilities, regardless of whether they were technically
23 known by another title at some point in time.

24 24. The California State Personnel Board (“SPB”) administers the civil service
25 classification system for the state. Reference to the SPB is intended to include its predecessors
26 and successors. The SPB creates and adjusts classes of positions and establishes minimum
27 qualifications for determining the fitness and qualifications of employees for each class of
28 position. The SPB created the civil service classifications for prison chaplains.

1 25. Avenal State Prison (“Avenal”) is, and at all times relevant to this lawsuit was, a
2 correctional facility that operates under the CDCR, duly organized and existing under the laws of
3 the State of California.

4 26. California Correctional Center (“CCC”) is, and at all times relevant to this lawsuit
5 was, a correctional facility that operates under the CDCR, duly organized and existing under the
6 laws of the State of California.

7 27. California Correctional Institution (“Tehachapi”) is, and at all times relevant to
8 this lawsuit was, a correctional facility that operates under the CDCR, duly organized and
9 existing under the laws of the State of California.

10 28. California Institution for Men (“Chino”) is, and at all times relevant to this lawsuit
11 was, a correctional facility that operates under the CDCR, duly organized and existing under the
12 laws of the State of California.

13 29. California Institution for Women (“Corona”) is, and at all times relevant to this
14 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
15 under the laws of the State of California.

16 30. California Men’s Colony (“San Luis Obispo”) is, and at all times relevant to this
17 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
18 under the laws of the State of California.

19 31. California Medical Facility (“Vacaville”) is, and at all times relevant to this
20 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
21 under the laws of the State of California.

22 32. California Rehabilitation Center (“Norco”) is, and at all times relevant to this
23 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
24 under the laws of the State of California.

25 33. California State Prison, Los Angeles County, in Lancaster, California
26 (“Lancaster”) is, and at all times relevant to this lawsuit was, a correctional facility that operates
27 under the CDCR, duly organized and existing under the laws of the State of California.

28 34. California State Prison, Sacramento (“Sacramento”) is, and at all times relevant to

1 this lawsuit was, a correctional facility that operates under the CDCR, duly organized and
2 existing under the laws of the State of California.

3 35. California State Prison, Solano ("Solano") is, and at all times relevant to this
4 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
5 under the laws of the State of California.

6 36. California Substance Abuse Treatment Facility at Corcoran ("SATF") is, and at all
7 times relevant to this lawsuit was, a correctional facility that operates under the CDCR, duly
8 organized and existing under the laws of the State of California.

9 37. Calipatria State Prison ("Calipatria") is, and at all times relevant to this lawsuit
10 was, a correctional facility that operates under the CDCR, duly organized and existing under the
11 laws of the State of California.

12 38. California State Prison, Centinela ("Centinela") is, and at all times relevant to this
13 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
14 under the laws of the State of California.

15 39. Chuckawalla Valley State Prison ("Chuckawalla") is, and at all times relevant to
16 this lawsuit was, a correctional facility that operates under the CDCR, duly organized and
17 existing under the laws of the State of California.

18 40. Corcoran State Prison ("Corcoran") is, and at all times relevant to this lawsuit was,
19 a correctional facility that operates under the CDCR, duly organized and existing under the laws
20 of the State of California.

21 41. Correctional Training Facility ("Soledad") is, and at all times relevant to this
22 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
23 under the laws of the State of California.

24 42. Deuel Vocational Institution ("Tracy") is, and at all times relevant to this lawsuit
25 was, a correctional facility that operates under the CDCR, duly organized and existing under the
26 laws of the State of California.

27 43. Folsom State Prison ("Folsom") is, and at all times relevant to this lawsuit was, a
28 correctional facility that operates under the CDCR, duly organized and existing under the laws of

1 the State of California.

2 44. High Desert State Prison (“High Desert”) is, and at all times relevant to this
3 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
4 under the laws of the State of California.

5 45. Ironwood State Prison (“Ironwood”) is, and at all times relevant to this lawsuit
6 was, a correctional facility that operates under the CDCR, duly organized and existing under the
7 laws of the State of California.

8 46. Mule Creek State Prison (“Mule Creek”) is, and at all times relevant to this lawsuit
9 was, a correctional facility that operates under the CDCR, duly organized and existing under the
10 laws of the State of California.

11 47. North Kern State Prison (“North Kern”) is, and at all times relevant to this lawsuit
12 was, a correctional facility that operates under the CDCR, duly organized and existing under the
13 laws of the State of California.

14 48. Pelican Bay State Prison (“Pelican Bay”) is, and at all times relevant to this lawsuit
15 was, a correctional facility that operates under the CDCR, duly organized and existing under the
16 laws of the State of California.

17 49. Pleasant Valley State Prison (“Pleasant Valley”) is, and at all times relevant to this
18 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
19 under the laws of the State of California.

20 50. R. J. Donovan Correctional Facility at Rock Mountain (“Rock Mountain”) is, and
21 at all times relevant to this lawsuit was, a correctional facility that operates under the CDCR, duly
22 organized and existing under the laws of the State of California.

23 51. Salinas Valley State Prison (“Salinas Valley”) is, and at all times relevant to this
24 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
25 under the laws of the State of California.

26 52. San Quentin State Prison (“San Quentin”) is, and at all times relevant to this
27 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
28 under the laws of the State of California.

1 53. Valley State Prison For Women (“Chowchilla”) is, and at all times relevant to this
2 lawsuit was, a correctional facility that operates under the CDCR, duly organized and existing
3 under the laws of the State of California.

4 54. Wasco State Prison (“Wasco”) is, and at all times relevant to this lawsuit was, a
5 correctional facility that operates under the CDCR, duly organized and existing under the laws of
6 the State of California.

7 55. Plaintiffs are informed and believe that Kathy Mendoza-Powers (“Mendoza-
8 Powers”) is or was at some time relevant to this complaint the Warden of Avenal State Prison.
9 Accordingly, plaintiffs sue Mendoza-Powers in her official capacity.

10 56. Plaintiffs are informed and believe that Kathleen Prosper (“Prosper”) is or was at
11 some time relevant to this complaint the Warden of California Correctional Center in Susanville,
12 California. Accordingly, plaintiffs sue Prosper in her official capacity.

13 57. Plaintiffs are informed and believe that William Sullivan (“Sullivan”) is or was at
14 some time relevant to this complaint the Warden of California Correctional Institution at
15 Tehachapi. Accordingly, plaintiffs sue Sullivan in his official capacity.

16 58. Plaintiffs are informed and believe that M.E. Poulos (“Poulos”) is or was at some
17 time relevant to this complaint the Warden of California Institution for Men. Accordingly,
18 Accordingly, plaintiffs sue Poulos in his official capacity.

19 59. Plaintiffs are informed and believe that Dawn Davison (“Davison”) is an
20 individual acting in her official capacity and at some of the times mentioned herein was employed
21 by the CDCR as the Warden of California Institution for Women. Accordingly, plaintiffs sue
22 Davison in her official capacity.

23 60. Plaintiffs are informed and believe that John Marshall (“Marshall”) is or was at
24 some time relevant to this complaint the Warden of California Men’s Colony. Accordingly,
25 plaintiffs sue Marshall in his official capacity.

26 61. Plaintiffs are informed and believe that Martin Veal (“Veal”) is or was at some
27 time relevant to this complaint the Warden of California Medical Facility. Accordingly, plaintiffs
28 sue Veal in his official capacity.

1 62. Plaintiffs are informed and believe that Guillermina Hall (“Hall”) is an individual
2 acting in her official capacity and at some of the times mentioned herein was employed by the
3 CDCR as the Warden of California Rehabilitation Center. Accordingly, plaintiffs sue Hall in her
4 official capacity.

5 63. Plaintiffs are informed and believe that Robert Ayers (“Ayers”) is or was at some
6 time relevant to this complaint the Warden of California State Prison in Los Angeles County.
7 Accordingly, plaintiffs sue Ayers in his official capacity.

8 64. Plaintiffs are informed and believe that Scott M. Kernan (“Kernan”) is or was at
9 some time relevant to this complaint the Warden of California State Prison at Sacramento.
10 Accordingly, plaintiffs sue Kernan in his official capacity.

11 65. Plaintiffs are informed and believe that Thomas L. Carey (“Carey”) is or was at
12 some time relevant to this complaint the Warden of California State Prison at Solano.
13 Accordingly, plaintiffs sue Carey in his official capacity.

14 66. Plaintiffs are informed and believe that Derral Adams (“Adams”) is or was at some
15 time relevant to this complaint the Warden of Substance Abuse Treatment Facility and State
16 Prison. Accordingly, plaintiffs sue Adams in his official capacity.

17 67. Plaintiffs are informed and believe that George Giurbino (“Giurbino”) is or was at
18 some time relevant to this complaint the Warden of Calipatria. Accordingly, plaintiffs sue
19 Giurbino in his official capacity.

20 68. Plaintiffs are informed and believe that J. Salazar (“Salazar”) is or was at some
21 time relevant to this complaint the Warden of Centinela. Accordingly, plaintiffs sue Salazar in
22 his official capacity.

23 69. Plaintiffs are informed and believe that Madelene A. Muntz (“Muntz”) is an
24 individual acting in her official capacity and at some of the times mentioned herein was employed
25 by the CDCR as the Warden of Chuckawalla Valley State Prison. Accordingly, plaintiffs sue
26 Muntz in her official capacity.

27 70. Plaintiffs are informed and believe that A. K. Scribner (“Scribner”) is or was at
28 some time relevant to this complaint the Warden of Corcoran. Accordingly, plaintiffs sue

1 Scribner in his official capacity.

2 71. Plaintiffs are informed and believe that Anthony Kane (“Kane”) is or was at some
3 time relevant to this complaint the Warden of Correctional Training Facility. Accordingly,
4 plaintiffs sue Kane in his official capacity.

5 72. Plaintiffs are informed and believe that Steve Moore (“Moore”) is or was at some
6 time relevant to this complaint the Warden of Deuel Vocational Institution. Accordingly,
7 plaintiffs sue Moore in his official capacity.

8 73. Plaintiffs are informed and believe that Matthew Kramer (“Kramer”) is or was at
9 some time relevant to this complaint the Warden of Folsom. Accordingly, plaintiffs sue Kramer
10 in his official capacity.

11 74. Plaintiffs are informed and believe that T. Felker (“Felker”) is or was at some time
12 relevant to this complaint the Warden of High Desert State Prison. Accordingly, plaintiffs sue
13 Felker in his official capacity.

14 75. Plaintiffs are informed and believe that Derrick Ollison (“Ollison”) is or was at
15 some time relevant to this complaint the Warden of Ironwood State Prison. Accordingly,
16 plaintiffs sue Ollison in his official capacity.

17 76. Plaintiffs are informed and believe that Rosanne Campbell (“Campbell”) is or was
18 at some time relevant to this complaint the Warden of Mule Creek. Upon information and belief,
19 Campbell, while Warden at Mule Creek, directed Mule Creek staff to refuse Plaintiff McCollum
20 access to Wiccan/Pagan inmates and refused Wiccan/Pagan inmates access to Plaintiff McCollum
21 or other Wiccan/Pagan clergy. Campbell denied Wiccan/Pagan inmates religious
22 accommodation, religious artifacts, and religious services, obstructed inmates’ access to clergy
23 without legitimate or compelling reason, and forced inmates to file grievances to obtain rights to
24 which they were entitled. Plaintiff McCollum has never been able to access Mule Creek inmates.
25 Accordingly, plaintiffs sue Campbell in her individual and official capacity.

26 77. Plaintiffs are informed and believe that Lea Ann Chrones (“Chrones”) is or was at
27 some time relevant to this complaint the Warden of North Kern. Accordingly, plaintiffs sue
28 Chrones in his official capacity.

1 78. Plaintiffs are informed and believe that Richard Kirkland (“Kirkland”) is or was at
2 some time relevant to this complaint the Warden of Pelican Bay State Prison. Accordingly,
3 plaintiffs sue Kirkland in his official capacity.

4 79. Plaintiffs are informed and believe that James A. Yates (“Yates”) is or was at some
5 time relevant to this complaint the Warden of Pleasant Valley. Accordingly, plaintiffs sue Yates
6 in his official capacity.

7 80. Plaintiffs are informed and believe that Robert J. Hernandez (“Hernandez”) is or
8 was at some time relevant to this complaint the Warden of Richard J. Donovan Correctional
9 Facility. Accordingly, plaintiffs sue Hernandez in his official capacity.

10 81. Plaintiffs are informed and believe that Mike Evans (“Evans”) is or was at some
11 time relevant to this complaint the Warden of Salinas Valley. Accordingly, plaintiffs sue Evans
12 in his official capacity.

13 82. Plaintiffs are informed and believe that Steven Oronski (“Oronski”) is or was at
14 some time relevant to this complaint the Warden of San Quentin State Prison. Accordingly,
15 plaintiffs sue Oronski in his official capacity.

16 83. Plaintiffs are informed and believe that Gloria Henry (“Henry”) is or was at some
17 time relevant to this complaint the Warden of Valley State Prison for Women. Accordingly,
18 plaintiffs sue Henry in her official capacity.

19 84. Plaintiffs are informed and believe that P.L. Vasquez (“Vasquez”) is or was at
20 some time relevant to this complaint the Warden of Wasco State Prison. Accordingly, plaintiffs
21 sue Vasquez in her official capacity.

22 85. Plaintiffs are informed and believe that William Elkins (“Elkins”) is or was at
23 some time relevant to this complaint a member of the State Personnel Board at some of the times
24 mentioned herein and currently serves as the Personnel Board’s President. Upon information and
25 belief, Elkins failed to review and revise civil service classifications to conform them to existing
26 antidiscrimination laws. Accordingly, plaintiffs sue Elkins in his individual and official capacity.

27 86. Plaintiffs are informed and believe that Maeley Tom (“Tom”) is or was at some
28 time relevant to this complaint a member of the State Personnel Board and currently serves as the

1 Personnel Board's Vice President. Accordingly, plaintiffs sue Tom in his official capacity.

2 87. Plaintiffs are informed and believe that Anne Sheehan ("Sheehan") is or was at
3 some time relevant to this complaint a member of the State Personnel Board Board. Accordingly,
4 plaintiffs sue Sheehan in his official capacity.

5 88. Plaintiffs are informed and believe that Sean Harrigan ("Harrigan") is or was at
6 some time relevant to this complaint a member of the State Personnel Board. Accordingly,
7 plaintiffs sue Harrigan in his official capacity.

8 89. Plaintiffs are informed and believe that Floyd Shimomura ("Shimomura") is or
9 was at some time relevant to this complaint the Executive Officer of the State Personnel Board.
10 Accordingly, plaintiffs sue Shimomura in his official capacity.

11 90. Plaintiffs are informed and believe that Ron Alvarado ("Alvarado") is or was at
12 some time relevant to this complaint a member of the State Personnel Board. Accordingly,
13 plaintiffs sue Alvarado in his official capacity.

14 91. Plaintiffs are informed and believe that Roderick Q. Hickman ("Hickman") is or
15 was at some time relevant to this complaint the Secretary of the CDCR. Upon information and
16 belief, Hickman formerly served as Secretary of the Youth and Adult Correctional Agency, which
17 oversaw the former California Department of Corrections, and which has been reorganized into
18 the CDCR. Upon information and belief, Hickman was informed in times relevant to claims
19 alleged herein that the CDCR hiring policy for correctional chaplains was unconstitutional
20 because it discriminated against Wiccan/Pagans, and informed Hickman that there were ongoing
21 other policies, practices, actions, and omissions that discriminated against Plaintiff McCollum
22 and the Wiccan/Pagan inmates. Upon information and belief, Hickman allowed the
23 discrimination to continue. Accordingly, plaintiffs sue Hickman in his individual and official
24 capacity.

25 92. Plaintiffs are informed and believe that Jeanne S. Woodford ("Woodford") is or
26 was at some time relevant to this complaint the Director of CDCR, and prior to that was the
27 Warden at San Quentin. Upon information and belief, Woodford was informed at times relevant
28 to claims alleged herein that the CDCR hiring policy for correctional chaplains was

1 unconstitutional because it discriminated against Wiccan/Pagans, and was informed that there
2 were ongoing other policies, practices, actions, and omissions that discriminated against Plaintiff
3 McCollum and the Wiccan/Pagan inmates. Plaintiff McCollum is informed and believes that
4 since that time to at least the filing of this action in both her capacity as warden at defendant San
5 Quentin and her more recent capacity as Director of CDCR, Woodford took no action to
6 investigate Plaintiff's claims or to remedy the discrimination. Accordingly, plaintiffs sue
7 Woodford in her individual and official capacity.

8 93. Plaintiffs are informed and believe that Ronald Barnes ("Barnes") is or was at
9 some time relevant to this complaint the Special Assistant to the Undersecretary of the CDCR.
10 Plaintiff McCollum informed Barnes at times relevant to claims alleged herein that the CDCR
11 hiring policy for correctional chaplains was unconstitutional because it discriminated against
12 Wiccan/Pagans, and informed Barnes that there were ongoing other policies, practices, actions,
13 and omissions that discriminated against Plaintiff McCollum and the Wiccan/Pagan inmates.
14 Upon information and belief, Barnes allowed the discrimination to continue. Accordingly,
15 plaintiffs sue Barnes in his individual and official capacity.

16 94. Plaintiffs are informed and believe that Barry Smith ("Smith") is or was at some
17 time relevant to this complaint the manager of the OCR or its successor. Plaintiff McCollum
18 informed Smith at times relevant to claims alleged herein that the CDCR hiring policy for
19 correctional chaplains was unconstitutional because it discriminated against Wiccan/Pagans, and
20 informed Smith that there were ongoing other policies, practices, actions, and omissions that
21 discriminated against Plaintiff McCollum and the Wiccan/Pagan inmates. Upon information and
22 belief, Smith has taken affirmative actions to disrupt Plaintiff McCollum's chaplaincy work in
23 California correctional institutions and made false and derogatory statements about Plaintiff
24 McCollum. Upon information and belief, Smith allowed the discrimination and obstruction to
25 continue. Accordingly, plaintiffs sue Smith in his individual and official capacity.

26 95. Plaintiffs are informed and believe that Merrie Koshell ("Koshell") is or was at
27 some time relevant to this complaint the Assistant Director of the OCR or its successor.
28 Accordingly, plaintiffs sue Koshell in her official capacity.

1 96. Plaintiffs are informed and believe that Arnold Ortega (“Ortega”) is or was at
2 some time relevant to this complaint the Community Resource Manager responsible for
3 overseeing religious programs at Salinas Valley. When Ortega was the Community Resource
4 Manager at Salinas Valley, Ortega denied Plaintiff McCollum access to inmates and denied
5 inmates access to Plaintiff McCollum. Upon information and belief, Ortega denied
6 Wiccan/Pagan inmates religious accommodation, religious artifacts, and religious services, and
7 obstructed inmates’ access to clergy. Accordingly, plaintiffs sue Ortega in his individual and
8 official capacity.

9 97. Plaintiffs are informed and believe that Al Bonilla (“Bonilla”) is or was at some
10 time relevant to this complaint the Community Resource Manager of Pleasant Valley. Bonilla
11 denied Plaintiff McCollum access to inmates and denied inmates access to Plaintiff McCollum.
12 Upon information and belief, Bonilla denied Wiccan/Pagan inmates religious accommodation,
13 religious artifacts, and religious services, and obstructed inmates’ access to clergy. Accordingly,
14 plaintiffs sue Bonilla in his individual and official capacity.

15 98. Plaintiffs are informed and believe that Sabrina Johnson (“Johnson”) is or was at
16 some time relevant to this complaint the Community Resource Manager at Corcoran. When
17 Johnson was the Community Resource Manager at Corcoran, she denied Plaintiff McCollum
18 access to inmates and denied inmates access to Plaintiff McCollum. Upon information and belief,
19 Johnson denied Wiccan/Pagan inmates religious accommodation, religious artifacts, and religious
20 services, and obstructed inmates’ access to clergy. Upon information and belief, Johnson
21 intentionally delayed and failed to complete security clearances for Plaintiff McCollum to deny
22 him access to inmates. Accordingly, plaintiffs sue Johnson in her individual and official capacity.

23 99. Plaintiffs are informed and believe that Octavio Peraza (“Peraza”) is or was at
24 some time relevant to this complaint Community Resource Manager at Calipatria. When Peraza
25 was the Community Resource Manager at Calipatria, he denied Plaintiff McCollum access to
26 inmates and denied inmates access to Plaintiff McCollum. Upon information and belief, Peraza
27 denied Wiccan/Pagan inmates religious accommodation, religious artifacts, and religious
28 services, and obstructed inmates’ access to clergy. Accordingly, plaintiffs sue Peraza in his

1 individual and official capacity.

2 100. Plaintiffs are informed and believe that Jorge Sareli (“Sareli”) is or was at some
3 time relevant to this complaint the Community Resource Manager at Salinas Valley. When Sareli
4 was the Community Resource Manager at Salinas Valley, he denied Plaintiff McCollum access to
5 inmates and denied inmates access to Plaintiff McCollum. Sareli continued to deny Plaintiff
6 McCollum access after being provided documentation that Wiccan/Pagan faiths were recognized
7 by the CDCR and after being provided documentation that Plaintiff McCollum was authorized to
8 serve as state-wide Wiccan Chaplain. Upon information and belief, Sareli denied Wiccan/Pagan
9 inmates religious accommodation, religious artifacts, and religious services, and obstructed
10 inmates’ access to clergy. Accordingly, plaintiffs sue Sareli in his individual and official
11 capacity.

12 101. Plaintiffs are informed and believe that Tip Kendal (“Kendal”) is or was at some
13 time relevant to this complaint Community Resource Manager at Folsom Prison. When Kendal
14 was the Community Resource Manager at Folsom Prison, he denied Plaintiff McCollum access to
15 inmates and denied inmates access to Plaintiff McCollum. Kendal continued to deny Plaintiff
16 McCollum access after being provided documentation that Wiccan/Pagan faiths were recognized
17 by the CDCR and after being provided documentation that Plaintiff McCollum was authorized to
18 serve as state-wide Wiccan Chaplain. Upon information and belief, Kendal denied Wiccan/Pagan
19 inmates religious accommodation, religious artifacts, and religious services, and obstructed
20 inmates’ access to clergy. Accordingly, plaintiffs sue Kendal in his individual and official
21 capacity.

22 102. Plaintiffs are informed and believe that Ito Neinhuis (“Neinhuis”) is or was at
23 some time relevant to this complaint the Community Resource Manager at San Quentin. When
24 Neinhuis was the Community Resource Manager at San Quentin, he denied Plaintiff McCollum
25 access to inmates and denied inmates access to Plaintiff McCollum. Neinhuis continued to deny
26 Plaintiff McCollum access after being provided documentation that Wiccan/Pagan faiths were
27 recognized by the CDCR and after being provided documentation that Plaintiff McCollum was
28 authorized to serve as state-wide Wiccan Chaplain. Upon information and belief, Nienhuis

1 denied Wiccan/Pagan inmates religious accommodation, religious artifacts, and religious
2 services, and obstructed inmates' access to clergy. Accordingly, plaintiffs sue Neinhuis in his
3 individual and official capacity.

4 103. Plaintiffs are informed and believe that K.J. Williams ("Williams") is or was at
5 some time relevant to this complaint in charge of Religion Programs at San Quentin. When
6 Williams oversaw religion programs at Folsom Prison, he denied Plaintiff McCollum access to
7 inmates and denied inmates access to Plaintiff McCollum. Williams continued to deny Plaintiff
8 McCollum access after being provided documentation that Wiccan/Pagan faiths were recognized
9 by the CDCR and after being provided documentation that Plaintiff McCollum was authorized to
10 serve as state-wide Wiccan Chaplain. Upon information and belief, Williams denied
11 Wiccan/Pagan inmates religious accommodation, religious artifacts, and religious services, and
12 obstructed inmates' access to clergy. Accordingly, plaintiffs sue Williams in his individual and
13 official capacity.

14 104. Plaintiffs are informed and believe that Chaplain Stewart ("Stewart") is or was at
15 some time relevant to this complaint the Protestant Chaplain at Sacramento. While at
16 Sacramento, Stewart was the Protestant Chaplain in charge of Wiccan inmate religious
17 accommodation. Upon information and belief, when serving as Protestant Chaplain, Stewart
18 obstructed Wiccan/Pagan inmates' access to religious services, denied their access to the chapel,
19 instructed chapel clerks to falsify ducat lists for Wiccan/Pagan inmates so that Wiccan/Pagan
20 inmates could not attend religious services, and refused to process Wiccan/Pagan inmates' orders
21 for religious artifacts when ordered from approved vendors. Accordingly, plaintiffs sue Stewart
22 in his individual and official capacity.

23 105. Plaintiffs are informed and believe that Chaplain Richie ("Richie") is or was at
24 some time relevant to this complaint the Protestant Chaplain at Calipatria. While at Calipatria,
25 Richie denied Plaintiff McCollum access to inmates. Richie continued to deny Plaintiff
26 McCollum access after being provided documentation that Wiccan/Pagan faiths were recognized
27 by the CDCR and after being provided documentation that Plaintiff McCollum was authorized to
28 serve as state-wide Wiccan Chaplain. Upon information and belief, Richie denied Wiccan/Pagan

1 inmates religious accommodation, religious artifacts, and religious services, and obstructed
2 inmates' access to clergy. Accordingly, plaintiffs sue Richie in his individual and official
3 capacity.

4 106. Plaintiffs are informed and believe that Chaplain Valenzuela ("Valenzuela") is or
5 was at some time relevant to this complaint the Protestant Chaplain at California Correctional
6 Institution at Tehachapi. While at Tehachapi, Valenzuela was the Protestant Chaplain in charge
7 of Wiccan inmate religious accommodation. Upon information and belief, Valenzuela obstructed
8 Wiccan/Pagan inmates' access to religious services, denied their access to the chapel, removed
9 approved Wiccan/Pagan literature, instructed chapel clerks to falsify ducat lists for Wiccan/Pagan
10 inmates so that Wiccan/Pagan inmates could not attend religious services, refused to process
11 Wiccan/Pagan inmates' orders for religious artifacts when ordered from approved vendors and
12 incited staff and inmates to take actions to interfere with any religious accommodation provided
13 to the Wiccan/Pagan inmates. Accordingly, plaintiffs sue Valenzuela in his individual and
14 official capacity.

15 107. Plaintiffs are informed and believe that Governor Arnold Schwarzenegger
16 ("Schwarzenegger") is or was at some time relevant to this complaint the governor of the State of
17 California. Accordingly, plaintiffs sue Schwarzenegger in his official capacity.

18 108. As set forth above, defendants Campbell, Elkins, Hickman, Woodford, Barnes,
19 Smith, Ortega, Bonilla, Johnson, Peraza, Sareli, Kendal, Neinhuis, Williams, Stewart, Richie, and
20 Valenzuela are being sued in their individual and official capacities. Unless otherwise noted, they
21 are referred to herein collectively as "Individual Capacity Defendants." All other individuals
22 named in this Complaint are being sued in their official capacities. Unless otherwise noted, they
23 are referred to herein collectively as "Official Capacity Defendants." Pursuant to Federal Rule of
24 Civil Procedure 25(d) the naming of the officials in their official capacity is intended to and does
25 reach the conduct of all predecessors and successors to their positions during the relevant time
26 period.

27 109. All defendants are referred to herein collectively as "Defendants." The defendant
28 California correctional institutions are referred to herein collectively as "Institutional

1 Defendants.”

2 110. Upon information and belief, the Wiccan/Pagan Inmate Class were, or will be, in
3 the custody of the Institutional Defendants during the times relevant to this lawsuit. Defendants
4 have engaged in the practices complained of in this complaint during the relevant time period.

5 **CLASS ACTION ALLEGATIONS**

6 111. The Wiccan/Pagan Inmate Plaintiffs seek to maintain this action on behalf of
7 themselves and all others similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules
8 of Civil Procedure. They seek to represent a class of all Wiccan/Pagan inmates, including but not
9 limited to Wiccans, Goddess worshippers, Neo-Pagans, Pagans, Norse Pagans (and any other
10 ethnic designation), Earth Religionist, Old Religionist, Druids, Shamans, Asatrurs, and those
11 practicing in the Faery, Celtic, Khemetic, Gardnerian, Church of All Worlds, Reclaiming, Dianic,
12 Alexandrian, Iseum of Isis, Reconstructionist, Odinists or Yoruban Traditions and other similar
13 nature-based faiths who have been confined in the California Department of Corrections at any
14 time from 1998 to present (the “Wiccan/Pagan Inmate Class”) and who will be so confined in the
15 future. As a result of their confinement, members of the class including the Wiccan/Pagan Inmate
16 Plaintiffs are or will be subjected to violations of the rights to free exercise of religion, freedom
17 from state establishment of religion, freedom from discriminatory treatment on the basis of
18 religion, and the guarantees of equal protection under the law. The Wiccan/Pagan Inmate
19 Plaintiffs represent a class of persons seeking declarative and injunctive relief to eliminate
20 defendants’ actions, omissions, policies, and practices that deprive them of those rights.

21 112. Upon information and belief, it is estimated that a substantial number of
22 (significantly more than 100) persons incarcerated in the California prison system practice
23 Wiccan/Pagan religions. As such, the proposed class is so numerous that joinder of all members
24 is impracticable.

25 113. Whether defendants have violated the Wiccan/Pagan Inmate Class’ rights to free
26 exercise of religion, equal protection under the law, freedom from state establishment of religion,
27 and freedom from religious discrimination are questions common to the claims of the entire class.
28 Defendants’ policies and practices with regard to their prison chaplain hiring policy and the

1 actions, omissions, policies and practices with regard to religious accommodation, as set forth
2 herein, also present questions of fact common to the class as a whole.

3 114. The claims of the Wiccan/Pagan Inmate Plaintiffs are typical of the claims of the
4 class. The Wiccan/Pagan Inmate Plaintiffs include inmates who have practiced or seek to
5 practice their Wiccan/Pagan religion. The Wiccan/Pagan Inmate Plaintiffs have been directly
6 injured by defendants' actions, omissions, policies and practices.

7 115. The Wiccan/Pagan Inmate Plaintiffs will fairly and adequately represent the
8 interests of the class. The Wiccan/Pagan Inmate Plaintiffs have no interests separate from those
9 of the class, and seek no relief other than the relief sought on behalf of the class. The
10 Wiccan/Pagan Inmate Plaintiffs' counsel are experienced in protection and enforcement of
11 statutory and constitutional rights, privileges and immunities.

12 116. Defendants have acted and refused to act on grounds generally applicable to the
13 class, therefore final injunctive relief with respect to the class as a whole is warranted.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 117. Plaintiff McCollum satisfied all conditions precedent to jurisdiction pursuant to
16 Title VII of the Civil Rights Act of 1964 ("Title VII"). Plaintiff McCollum timely filed charges
17 of discrimination with the Equal Employment Opportunity Commission ("EEOC") on July 21,
18 2003, based on a series of related acts against Plaintiff McCollum involving Plaintiff McCollum's
19 ineligibility for a chaplain position. The EEOC terminated this investigation and Plaintiff
20 McCollum received his "Notice of Right to Sue" letter from the EEOC on July 7, 2004. This suit
21 was timely filed within 90 days of receiving said letter.

22 118. Plaintiff McCollum satisfied all conditions precedent to jurisdiction pursuant to the
23 California Fair Employment and Housing Act ("FEHA"). Plaintiff McCollum filed a complaint
24 with the EEOC on July 21, 2003. The EEOC referred the complaint to the Department of Fair
25 Employment and Housing ("DFEH"). On July 22, 2003, Plaintiff McCollum received a Right-to-
26 Sue notice from the DFEH. The DFEH waived processing of Plaintiff McCollum's complaint to
27 the EEOC. The EEOC completed its investigation and Plaintiff McCollum received the above-
28 referenced right-to-sue notice on July 7, 2004.

119. The Wiccan/Pagan Inmate Plaintiffs have exhausted their administrative remedies to the extent those remedies are not futile or abusive, and, upon information and believe, allege that additional grievances would be futile because they would be decided under the same policies and by the same people. Further, the Wiccan/Pagan Inmate Plaintiffs' attempts to file additional grievances have been frustrated by defendants who refused to process and/or lost timely filed 602 complaints as part of an effort to frustrate the ability of Wiccan/Pagan inmates to raise claims with the Court. Upon information and belief, when defendants do not lose or entirely ignore 602s relating to the matters set forth in this complaint, there is unreasonable delay in responding and an indefinite time period for administrative action or when relief is allegedly granted the relief granted is often not implemented. Further, absent a change in the Five State-Sanctioned Faiths policy, the persons responsible for processing the 602s lack the ability to address fully the deprivation of the substantial constitutional rights at issue.

STATEMENT OF FACTS

The Chaplaincy Program

120. Section 5009 of the California Penal Code provides that all state prison inmates shall be afforded reasonable opportunities to exercise religious freedom. Prison wardens are obligated under the California Administrative Code to make "every reasonable effort to provide for the religious and spiritual welfare of all interested individuals and groups of inmates."

121. The CDCR has hired chaplains since 1931 to accommodate the religious freedoms of prisoners. The position of chaplain is a civil service classification created by the SPB. There are, and for all times relevant to this lawsuit, have been five chaplain civil service classifications: "Catholic Chaplain," "Protestant Chaplain," "Jewish Chaplain," "Muslim Chaplain," and "Native American Spiritual Advisor." Applicants for these positions are segregated by faith and minimum qualifications for these positions limit applicants by faith. The system has no mechanism to hire clergy of any other religious denomination.

122. The CDCR chaplaincy program does not reflect the religious preferences of the inmate population. The CDCR decided in 1957 to limit chaplain positions to Catholic, Protestant, and Jewish. The decision to add the classification of Muslim chaplain in 1981 was made by

1 stipulated judgment in a lawsuit involving the provision of Muslim faith services. The decision to
 2 add the classification of Native American Spiritual Advisor in 1989 was made by stipulated
 3 judgment after Native American inmates sued to obtain funding for Native American religious
 4 programming in parity with other recognized religions. When last surveyed, in 2002, Wiccan
 5 inmates alone, excluding any other Wiccan/Pagan inmates, numbered in the hundreds and
 6 outnumbered Jewish inmates by two to one. The CDCR does not sponsor a single state
 7 Wiccan/Pagan chaplain, but sponsors at least three Jewish chaplains. There are no objective
 8 criteria that are applied, without regard to the content of a religion, to determine which religions
 9 will have chaplains or what other types of accommodations should be provided to Wiccan/Pagan
 10 inmates. Instead, there is pervasive discrimination in favor of particular faiths with no objective
 11 justification for the manner and means by which clergy of particular faiths and the extent and
 12 manner of other religious accommodations are selected and no ongoing review and adjustment of
 13 the policy to address changing demographics and other factors in the CDCR.

14 **Wiccan/Pagans Are Treated Unequally**

15 123. The Five State-Sanctioned Faiths Policy creates a two-tier system of sponsored
 16 religions and unsponsored religions. State chaplain positions are limited to Five State-Sanctioned
 17 Faiths clergy; Wiccan/Pagan clergy and clergy of all other faiths may only become volunteers and
 18 then only if approved by the relevant institution, which approval is often denied without cause.
 19 State chaplains have state funding for religious services and artifacts, regular access to inmates,
 20 and intangible benefits associated with their official status. Volunteer chaplains and the inmates
 21 they serve do not have access to any of these benefits and privileges. These differences are the
 22 product of discrimination, not based on objective, content-neutral criteria.

23 124. Five State-Sanctioned Faiths inmates receive greater levels of religious
 24 accommodation than do Wiccan/Pagan inmates as a result of state sponsorship of Five State-
 25 Sanctioned Faiths chaplains. Chaplains of the Five State-Sanctioned Faiths who are hired are
 26 often hostile to Wiccan/Pagan religions, yet are called on to oversee Wiccan/Pagan religious life
 27 because of the absence of Wiccan/Pagan chaplains. The Five State-Sanctioned Faiths chaplains
 28 discriminate against the Wiccan/Pagans when forced into such roles and prioritize the needs of

1 the adherents of their own faiths above the needs of the Wiccan/Pagans. Inmates are served by
2 volunteer chaplains or not served by any chaplains at all, including the Wiccan/Pagan Inmate
3 Class. Wiccan/Pagan class members are denied the benefits and privileges of state sponsorship,
4 with no objective, justification such as custody or security for such denials. Wiccan/Pagan
5 inmates have restricted access to the chapel or other space for conducting services, to clergy, to
6 funds for religious activities and religious objects, to time off work for religious holidays and
7 services, and to religious counseling that is disproportionate to that of other inmates. This
8 discrimination is pervasive and the limitations it imposes on the Wiccan/Pagan Inmates is the
9 product of unlawful discrimination against them, not the product of a content-neutral compelling
10 governmental interest.

11 **Religious Program Policies**

12 125. On information and belief, Plaintiffs allege that the CDCR Department Operations
13 Manual ("DOM") regulates religious programs. Among other regulations, the DOM approves
14 kosher diets and Christian religious artifacts, and regulates the provision and use of sweat lodges.
15 The DOM does not address religious services, religious artifacts, or religious texts for
16 Wiccan/Pagan faiths.

17 126. On information and belief, Plaintiffs allege that each prison warden has authority
18 to enact a regulatory supplement to the DOM, which restricts or expands the religious
19 programming sections set out in the DOM. These regulatory supplements are also enacted as
20 Operational Procedures. These supplemental religious programming regulations are drafted
21 and/or enforced in a manner so as to exclude Wiccan/Pagan religious artifacts, omit vendors who
22 supply Wiccan/Pagan religious artifacts, limit Wiccan/Pagan services, and deny Wiccan/Pagan
23 inmates religious accommodation, and restrict free exercise of religious rights. Such policies are
24 tolerated by the CDCR.

25 **Wiccan/Pagan Chaplain**

26 127. In 1997, as part of a settlement agreement with a Wiccan inmate, the California
27 Attorney General's office contacted Plaintiff McCollum and requested that he provide Wiccan
28 services to inmates at California Correctional Institution at Tehachapi.

Religious Discrimination in Employment

128. During the relevant time period and within the applicable statutes of limitations, Plaintiff McCollum, an ordained religious leader and qualified spiritual advisor, sought state employment as a chaplain. On at least eight occasions, including within the two-year time period preceeding the filing of this Complaint, Plaintiff McCollum has been denied the opportunity to apply for a CDCR chaplain position because defendants will not hire Wiccan/Pagans for chaplain positions. The CDCR will continue to deny him an opportunity to apply or be hired for an open chaplain position so long as the Five State-Sanctioned Faiths Policy remains in effect.

129. Despite Plaintiff McCollum's qualifications to perform the job duties of a chaplain, defendant CDCR continued to seek other applicants for each open chaplain positions sought by Plaintiff McCollum.

130. On or about July 21, 2003, Plaintiff McCollum filed an employment discrimination claim with the Equal Employment Opportunity Commission against the CDCR to protest defendants' disparate treatment of non-Five State-Sanctioned Faiths religions in employment.

131. The Five State-Sanctioned Faiths Policy, by which defendants sponsor chaplain positions for only the Five State-Sanctioned Faiths, and in which only clergy ordained in one of those Five State-Sanctioned Faiths may apply for a state chaplain position, is still in force today.

Religious Discrimination, Retaliation and Burdens on Free Exercise of Religion

132. Plaintiff McCollum has experienced discriminatory and unequal treatment by defendants, including without limitation:

- (a) false and derogatory remarks regarding Plaintiff McCollum's religion, character, congregation, clergy colleagues and deity;
- (b) false accusations of misconduct by Plaintiff McCollum and other volunteer Wiccan/Pagan clergy whom Plaintiff McCollum has brought to CDCR institutions;
- (c) threats of violence;

- (d) differential, disrespectful, and disdainful treatment of Plaintiff McCollum and the religious items he has brought to CDCR institutions;
- (e) inciting Protestant inmates to take action against Plaintiff McCollum and Plaintiff McCollum's congregation;
- (f) slander; and
- (g) being denied access to CDCR institutions to serve inmates.

133. Plaintiff McCollum informed defendants on several occasions that he experienced and continues to experience derogatory treatment. Defendants failed to take prompt action to halt the discriminatory and abusive behavior.

134. Plaintiff McCollum also complained to defendants, who were his supervisors, about the discriminatory treatment experienced by the Wiccan/Pagan inmates. On more than one occasion, Plaintiff McCollum informed defendants that their actions were in violation of law. After Plaintiff McCollum spoke out about the discrimination toward him and the Wiccan/Pagan inmates, defendants retaliated against him for his speech, including, without limitation on many occasions refusing to respond to his phone calls to schedule services and refusal to approve security clearances. When these actions occurred, they prevented Plaintiff McCollum from being able to serve as a volunteer Wiccan Chaplain to many in his inmate congregation, i.e. the Wiccan/Pagan Inmate Class.

135. Wiccan/Pagan Inmate Class members experienced discriminatory and unequal treatment as a result of defendants' conduct, including without limitation:

- (a) denial of access to clergy, religious services, religious rites and religious literature;
- (b) confiscation and/or destruction of religious artifacts;
- (c) denial of adequate and reasonable access to funds for religious activities;
- (d) denial of adequate and reasonable access to time off work for religious holidays and services;
- (e) denial of access to religious counseling in times of personal crisis, such as a death in the family;

- (f) subjection to ridicule by staff, humiliation and derogatory treatment, including false and derogatory statements regarding class members' religion, character, and deity;
- (g) unequal treatment and retaliation in the administrative "602" grievance process;
- (h) ordering more severe punishment than others receive for substantially similar infractions;
- (i) altering documents to change a Wiccan/Pagan Inmate's religious preference, when such a change is not requested by the inmate;
- (j) threats of violence based on religious preference; and
- (k) differential, disrespectful and disdainful treatment of Wiccan/Pagan inmates and their religious items.

136. Wiccan/Pagan Inmate Class Representatives have grieved without success issues to institutional defendants including but not limited to:

- (a) deprivation of correspondence and various literature of a religious nature;
- (b) deprivation of attendance at Wiccan/Pagan religious services;
- (c) unreasonable delay in providing approved religious accoutrements, literature and spiritual artifacts;
- (d) denial of appropriate worship on Wiccan/Pagan holidays or significant dates in the Wiccan/Pagan faith;
- (e) deprivation of religious services administered and celebrated by a Wiccan/Pagan minister or chaplain;
- (f) denial of access to religious accoutrements, such as herbs, oils, plants and stones or other significant spiritual necklaces, marbles or other items; and
- (g) confiscation and destruction of religious accoutrements and spiritual artifacts;
- (h) discrimination based on religious beliefs;
- (i) deprivation of the right to practice Wiccan/Pagan religious services; and

(j) retaliation based on the exercise of religious beliefs.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

137. An actual and substantial controversy exists between Plaintiff McCollum and the Wiccan/Pagan Inmate Class, on the one hand, and defendants, on the other hand, as to their respective legal rights and duties. Plaintiff McCollum and the Wiccan/Pagan Inmate Class contend that defendants' denominational minimum qualifications for chaplain positions is illegal. Plaintiff McCollum and the Wiccan/Pagan Inmate Class allege that, on information and belief, defendants contend the restriction is valid. Plaintiff McCollum and the Wiccan/Pagan Inmate Class also contend that the selection of only five faiths for state chaplain civil service classifications, without the application of objective criteria and periodic review of which religions fit within those criteria, and the attendant benefits and privileges the state bestows on the Five State-Sanctioned Faiths, is an illegal establishment of religion. Plaintiff McCollum and the Wiccan/Pagan Inmate Class allege that, on information and belief, defendants contend the "Five State-Sanctioned Faiths Policy" is valid. Plaintiffs have no plain, speedy or adequate remedy at law. A declaration that the policies, practices, actions, and omissions such as are alleged herein are unconstitutional and contrary to law is appropriate.

138. If not enjoined by the Court, defendants will continue to restrict Plaintiff McCollum and the Wiccan/Pagan Inmate Class's ability to exercise their religion by denying Plaintiff McCollum employment and full access to his congregation and by denying the Wiccan/Pagan Inmate Class access to clergy, religious services, and religious artifacts. This restriction will impose irreparable injury on Plaintiff McCollum and the Wiccan/Pagan Inmate Class.

139. If not enjoined by the Court, defendants will continue to treat Plaintiff McCollum and the Wiccan/Pagan Inmate Class disparately and deny them equal protection under the law. This treatment will impose irreparable injury on Plaintiff McCollum and the Wiccan/Pagan Inmate Class. Plaintiff McCollum and the Wiccan/Pagan Inmate Class have no plain, speedy or adequate remedy at law.

140. Injunctive relief including, but not limited to, an order enjoining defendants' future policies, practices, actions, and omissions such as are alleged herein, and requiring the reformation of the defendants' policies, practices, actions, and omissions so as to eliminate their discriminatory effect, are therefore appropriate and necessary to avoid irreparable harm to Plaintiffs and to effectuate the purposes of the United States and California Constitutions, RLUIPA, Title VII, FEHA and the other statutes and laws referenced herein as the subject of Plaintiff McCollum and the Wiccan/Pagan Inmate Class' claims for relief.

CLAIMS FOR RELIEF

FIRST CLAIM: TITLE VII OF THE 1964 CIVIL RIGHTS ACT VIOLATION (42 U.S.C. §§2000e *et seq.*)

(Plaintiff McCollum Against Defendants CDCR, SPB, OCR and the Institutional Defendants)

141. Plaintiff McCollum refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 140 as if fully set forth in this claim for relief.

142. Defendants are employers subject to Title VII.

143. The Five State-Sanctioned Faiths Policy in itself and as applied, and the other policies and the practices, actions, and omissions alleged herein, constitute unlawful discrimination in employment on the basis of religion in violation of Title VII.

144. Defendants have limited, segregated and/or classified Plaintiff McCollum and all non-Five State-Sanctioned Faiths applicants in a way that deprives Plaintiff McCollum and non-Five State-Sanctioned Faiths applicants of employment opportunities or otherwise adversely affects the opportunities or status of the individual because of their religion. Defendants channel individuals who do not belong to the Five State-Sanctioned Faiths into volunteer opportunities instead of civil service positions or deny them any chaplaincy work altogether. Job postings for the Five State-Sanctioned Faiths chaplain positions, which are limited by religious faith, contain terms or phrases that would deter non-Five State-Sanctioned Faiths persons from applying. There are no legitimate, objective or content-neutral criteria applied to determine which Faiths the

1 defendants will recognize. Defendants' actions directed to the Wiccan/Pagan Inmate Class are
2 not the least restrictive means of furthering a compelling governmental interest.

3 145. The intentional limiting, segregating and /or classifying of job positions was the
4 determinative factor in Plaintiff McCollum's disqualification from employment as a chaplain.

5 146. As a direct and proximate cause of the above-named Defendants' policies,
6 practices, actions, and omissions alleged in this complaint, Plaintiff McCollum has suffered and,
7 on information and belief, will continue to suffer special damages including, but not limited to,
8 lost wages and benefits, lost future earnings, according to proof.

9 147. The above-named defendants undertook the policies, practices, actions, and
10 omissions alleged in this complaint intentionally and with willful disregard for the rights of
11 Plaintiff McCollum.

12 148. Injunctive relief is warranted by the allegations set forth throughout this complaint
13 and as specifically alleged above in Paragraphs 137 through 140.

14 **SECOND CLAIM: FOURTEENTH AMENDMENT: EQUAL PROTECTION CLAUSE**
15 **(Plaintiff McCollum and the Wiccan/Pagan Inmate Class Against All Official Capacity**
16 **Defendants and All Individual Defendants)**

17 149. Plaintiff McCollum and the Wiccan/Pagan Inmate Class refer to and incorporate
18 herein by reference the allegations contained in Paragraphs 1 through 148 as if fully set forth in
19 this claim for relief.

20 150. The actions against defendants complained of herein are brought pursuant to 42
21 U.S.C. § 1983 because defendants' conduct constitutes a violation of the Equal Protection Clause
22 of the Fourteenth Amendment to the U.S. Constitution. Defendants' policies, practices, acts and
23 omissions deprive Plaintiff McCollum and the Wiccan/Pagan Inmate Class, either directly or
24 indirectly, of equal access to privileges and benefits granted as a matter of course to Five State-
25 Sanctioned Faiths practitioners, without any objective, content neutral justification for such
26 discrimination and without establishing that the actions of defendants were further penological
27 goal.
28

151. The above-named defendants undertook the policies, practices, actions, and omissions alleged in this complaint intentionally and with willful disregard for the rights of Plaintiff McCollum.

152. In violating Plaintiff McCollum's and the Wiccan/Pagan Inmate Class' rights under the Fourteenth Amendment to the United States Constitution, Defendants directly and proximately caused Plaintiff McCollum and the Wiccan/Pagan Inmate Class to suffer emotional distress, humiliation and dignitary harms, among other injuries.

153. Injunctive relief is warranted by the allegations set forth throughout this complaint and as specifically alleged above in Paragraphs 137 through 140.

THIRD CLAIM: FIRST AND FOURTEENTH AMENDMENTS: FREE EXERCISE OF RELIGION

(The Wiccan/Pagan Inmate Class Against All Official Capacity Defendants and All Individual Defendants)

154. The Wiccan/Pagan Inmate Class refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 153 as if fully set forth in this claim for relief.

155. The First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, prohibits defendants from enacting regulations and policies that result in "establishment of religion, or [that] prohibit[] the free exercise thereof."

156. The actions against defendants complained of herein are brought pursuant to 42 U.S.C. § 1983 because defendants' conduct constitutes a violation of the Free Exercise Clause of the First Amendment to the U.S. Constitution. Defendants' policies, practices, acts and omissions substantially burden the ability of the Wiccan/Pagan Inmate Class to practice their religion and prevent them from engaging in religious ceremonies and conduct that form the core practices of the religion. Defendants have no legitimate or compelling reason for placing a substantial burden on the Wiccan/Pagan Inmate Class' ability to practice their religion.

157. That a substantial burden on inmates' free exercise of religion violates the First Amendment was clearly established law of which a reasonable person in defendants' position would have known.

158. In violating the Wiccan/Pagan Inmate Class' rights under the First Amendment to the United States Constitution, defendants directly and proximately caused the Wiccan/Pagan Inmate Class to suffer and continue to suffer emotional distress, humiliation and dignitary harms, among other injuries.

159. The above-named defendants undertook the policies, practices, actions, and omissions alleged in this complaint intentionally and with willful disregard for the rights of the Wiccan/Pagan Inmate Class.

160. Injunctive relief is warranted by the allegations set forth throughout this complaint and as specifically alleged above in Paragraphs 137 through 140.

FOURTH CLAIM: FIRST AND FOURTEENTH AMENDMENTS: ESTABLISHMENT CLAUSE (SECTION 1983)

(Plaintiff McCollum and the Wiccan/Pagan Inmate Class Against All Official Capacity Defendants and All Individual Defendants)

161. Plaintiff McCollum and the Wiccan/Pagan Inmate Class refer to and incorporate herein by reference the allegations contained in Paragraphs 1 through 160 as if fully set forth in this claim for relief.

162. The actions against Plaintiffs complained of herein are brought pursuant to 42 U.S.C. § 1983 because defendants' conduct constitutes a violation of the Establishment Clause of the First Amendment to the U.S. Constitution, as incorporated through the Fourteenth Amendment. Defendants' policies, practices, acts and omissions in sponsoring chaplains only from the Five State-Sanctioned Faiths religions, without any objective, content neutral justification for such discrimination, endorsed and established those religions.

163. The above-named defendants undertook the policies, practices, actions, and omissions alleged in this complaint intentionally and with willful disregard for the rights of Plaintiff McCollum and the Wiccan/Pagan Inmate Class.

164. In violating Plaintiff McCollum's and the Wiccan/Pagan Inmates Class' rights under the First Amendment to the United States Constitution, defendants directly and proximately caused Plaintiff McCollum and the Wiccan/Pagan Inmate Class to suffer and to continue to suffer emotional distress, humiliation and dignitary harms, among other injuries.

1 165. Injunctive relief is warranted by the allegations set forth throughout this complaint
2 and as specifically alleged above in Paragraphs 137 through 140.

3 **FIFTH CLAIM: FIRST AND FOURTEENTH AMENDMENTS FREE SPEECH RIGHTS**
4 **VIOLATION (SECTION 1983)**

5 **(Plaintiff McCollum Against All Individual Defendants)**

6 166. Plaintiff McCollum refers to and incorporates herein by reference the allegations
7 contained in Paragraphs 1 through 165 as if fully set forth in this claim for relief.

8 167. The actions of defendants complained of herein are brought pursuant to 42 U.S.C.
9 § 1983 and constitute a violation of the First Amendment to the U.S. Constitution, as incorporated
10 though the Fourteenth Amendment. Defendants' policies, practices, acts and omissions in
11 retaliation against Plaintiff McCollum's constitutionally protected expression violated Plaintiff
12 McCollum's right to free speech.

13 168. Defendants had authority over Plaintiff McCollum's access to prisons and inmates
14 and his service as a volunteer.

15 169. Defendants retaliated against Plaintiff McCollum for speaking out on matters of
16 public concern, specifically by complaining against the unlawful and discriminatory practices
17 inherent in the chaplaincy program, intentional discriminatory acts by state employees, and the
18 failure to reasonably accommodate the religious practices of Wiccan/Pagan inmates.

19 170. Defendants' retaliation is manifested by their obstruction of Plaintiff McCollum's
20 access to prisons and inmates and the denial of Plaintiff McCollum's opportunity to serve as a
21 volunteer for the government, which opportunity is governmental benefit or privilege, the
22 deprivation of which can trigger First Amendment scrutiny.

23 171. Defendants committed additional retaliatory acts against Plaintiff that violate
24 Plaintiffs' First Amendment Free Speech rights, including ostracism, silent treatment, selective
25 enforcement of the rules, poor reviews, defamatory statements to the media, intimidation, and
26 harassment.

27 172. It was clearly established at all times relevant in the complaint that the opportunity
28 to volunteer in prisons is a valuable government benefit. A reasonable person in defendants'

1 position should have known that obstructing Plaintiff McCollum's access to prisons and inmates
 2 by delaying security clearances or refusing to schedule services deprived Plaintiff McCollum of
 3 the opportunity to volunteer.

4 173. It was clearly established at all relevant times that individuals, including those who
 5 are not technically employees, suffer retaliation when they are deprived a valuable government
 6 benefit because of their speech on a matter of public concern.

7 174. The above-named defendants undertook the policies, practices, actions, and
 8 omissions alleged in this complaint intentionally and with willful disregard for the rights of
 9 Plaintiff McCollum.

10 175. As a direct and proximate cause of the above-named Defendants' policies,
 11 practices, actions, and omissions alleged in this complaint, Plaintiff McCollum has suffered and,
 12 on information and belief, will continue to suffer special damages including, according to proof.

13 176. Injunctive relief is warranted by the allegations set forth throughout this complaint
 14 and as specifically alleged above in Paragraphs 137 through 140.

15 **SIXTH CLAIM: RELIGIOUS LAND USE AND INSTITUTIONAL PERSONS**
 16 **VIOLATION (U.S.C. §§ 2000cc, *et seq.*)(RLUIPA)**

17 **(Plaintiff McCollum and the Wiccan/Pagan Inmate Class Against the CDCR, the OCR, the**
 18 **Institutional Defendants, the All Official Capacity Defendants and the All Individual**
Capacity Defendants)

19 177. Plaintiff McCollum and the Wiccan/Pagan Inmate Class refer to and incorporate
 20 herein by reference the allegations contained in Paragraphs 1 through 176 as if fully set forth in
 21 this claim for relief.

22 178. The Religious Land Use and Institutionalized Persons Act prohibits any substantial
 23 burden on free exercise of religion unless it (1) furthers a compelling government interest, and (2)
 24 is the least restrictive means of furthering that compelling interest. Restrictions that merely
 25 further a legitimate penological interest are invalidated by RLUIPA.

26 179. Upon information and belief, the CDCR receives financial assistance from the
 27 United States Government.
 28

180. The policies, practices, actions, and omissions alleged in this complaint substantially burden the Wiccan/Pagan Inmates Class' exercise of religion in violation of U.S.C. §§ 2000cc, *et seq.* and threaten to continue burdening the Wiccan/Pagan Inmates' religious practice.

181. The burdens on the Wiccan/Pagan Inmates Class' religious practice are not the least restrictive means of furthering any compelling government interest.

182. The above-named defendants undertook the policies, practices, actions, and omissions alleged in this complaint intentionally and with willful disregard for the rights of Plaintiff McCollum and the Wiccan/Pagan Inmate Class.

183. As a direct and proximate cause of the policies, practices, actions, and omissions of the defendants alleged in this complaint, Plaintiff McCollum and the Wiccan/Pagan Inmate Class have suffered and continue to suffer emotional distress, humiliation and dignitary harms, among other injuries.

184. Injunctive relief is warranted by the allegations set forth throughout this complaint and as specifically alleged above in Paragraphs 137 through 140.

SEVENTH CLAIM: ARTICLE 1, § 4 OF THE CONSTITUTION OF THE STATE OF CALIFORNIA VIOLATION

(Plaintiff McCollum and the Wiccan/Pagan Inmate Class Against the All Official Capacity Defendants and the All Individual Defendants)

185. Plaintiffs refer to and incorporate herein by reference the allegations contained in Paragraphs 1 through 184 as if fully set forth in this claim for relief.

186. Article I (Declaration of Rights), § 4 of the Constitution of the State of California provides, in pertinent part: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed The Legislature shall make no law respecting an establishment of religion."

187. The Five State-Sanctioned Faiths Policy in itself and as applied and the other policies and the practices, actions, and omissions of the defendants alleged in this complaint violate the proscriptions of Article I, § 4 of the Constitution of the State of California.

1 188. The Five State-Sanctioned Faiths Policy in itself and as applied and the other
2 policies and the practices, actions, and omissions of the defendants alleged in this complaint have
3 prevented Plaintiff McCollum from applying for a position as a chaplain in any CDCR institution,
4 being hired for a position as a chaplain in any CDCR institution, and from being paid per diem
5 and for expenses incurred as a volunteer chaplain in any CDCR institution.

6 189. The Five State-Sanctioned Faiths Policy in itself and as applied and the other
7 policies and the practices, actions, and omissions of the defendants alleged in this complaint have
8 resulted in religious discrimination against Plaintiff McCollum and the Wiccan/Pagan Inmate
9 Class and preferences being granted to inmates and clergy of the Five State-Sanctioned Faiths
10 sponsored by defendants.

11 190. The above-named defendants undertook the policies, practices, actions, and
12 omissions alleged in this complaint intentionally and with willful disregard for the rights of
13 Plaintiff McCollum and the Wiccan/Pagan Inmate Class.

14 191. As a direct and proximate cause of the policies, practices, actions, and omissions
15 of the Defendants alleged in this complaint, Plaintiff McCollum and the Wiccan/Pagan Inmate
16 Class have suffered and continue to suffer emotional distress, humiliation and dignitary harms,
17 among other injuries, and Plaintiff McCollum has suffered and, on information and belief, will
18 continue to suffer special damages including, but not limited to, lost wages and benefits, lost
19 future earnings, according to proof.

20 192. Defendants undertook the policies, practices, actions, and omissions alleged in this
21 complaint willfully and with disregard for the rights of Plaintiff McCollum and the Wiccan/Pagan
22 Inmate Class.

23 193. Injunctive relief is warranted by the allegations set forth throughout this complaint
24 and as specifically alleged above in Paragraphs 137 through 140.

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EIGHTH CLAIM: FAIR EMPLOYMENT AND HOUSING ACT (FEHA) VIOLATION: DISCRIMINATION

(Plaintiff McCollum Against Defendants CDCR, SPB, OCR, and the Institutional Defendants)

194. Plaintiff McCollum refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 193 as if fully set forth in this claim for relief.

195. Under FEHA, it is “an unlawful employment practice for an employer to . . . discriminate against a person in . . . employment.”

196. Defendants are employers within the meaning of Cal. Gov. Code § 12926(d).

197. Plaintiff McCollum sought employment with defendants as a salaried chaplain.

198. Plaintiff McCollum practices a bona fide religious belief. Defendants knew of Plaintiff McCollum’s religious belief. Plaintiff McCollum’s religious belief conflicted with Defendants’ sponsorship of only Five State-Sanctioned Faiths for paid chaplain positions because it made him ineligible to apply for an open salaried chaplain position.

199. The Five State-Sanctioned Faiths Policy in itself and as applied and the other policies and the practices, actions, and omissions of the Defendants alleged in this complaint have resulted in discrimination to Plaintiff McCollum.

200. As a direct and proximate cause of the policies, practices, actions, and omissions of the defendants alleged in this complaint, Plaintiff McCollum suffered and continues to suffer emotional distress, humiliation and dignitary harms, among other injuries, and Plaintiff McCollum has suffered and, on information and belief, will continue to suffer special damages including, but not limited to, lost wages and benefits, lost future earnings, according to proof.

201. Defendants undertook the policies, practices, actions, and omissions alleged in this complaint intentionally and with willful disregard for the rights of Plaintiff McCollum.

202. Injunctive relief is warranted by the allegations set forth throughout this complaint and as specifically alleged above in Paragraphs 137 through 140.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff McCollum and the Wiccan/Pagan Inmate Class, individually and on behalf of all others similarly situated, request that this Court do the following:

- (a) Assume jurisdiction over this action;
- (b) Issue an order certifying this action to proceed as a class pursuant to Rules 23(a) and (b) of the Federal Rules of Civil Procedure;
- (c) Issue a judgment pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure declaring that the Five State-Sanctioned Faiths hiring policy is unconstitutional on its face and that the policies, practices, acts and omissions complained of herein violate Plaintiff McCollum and the Wiccan/Pagan Inmate Class' rights as set forth in herein.
- (d) Issue permanent injunctive relief restraining defendants and their officers, agents, directors, successors, employees, attorneys, or representatives from further violations of the First Amendment to the United States Constitution, Article 1, §4 of the Constitution of the State of California, RLUIPA, Title VII, FEHA and the other statutes and laws referenced herein as the subject of Plaintiff McCollum and the Wiccan/Pagan Inmate Class' claims for relief, including but not limited to enjoining defendants from policies, practices, actions, and omissions such as those alleged herein, and requiring the establishment of appropriate and effective means to prevent future such violations;
- (e) Retain jurisdiction over defendants until such time that the Court is satisfied that defendants' unlawful policies, practices, acts and omissions no longer exist and will not recur;
- (f) Award Plaintiff McCollum compensatory damages for his expenditures and for lost wages, benefits and seniority for his time serving as Wiccan chaplain to the inmates of California correctional facilities;

- 1 (g) Award of costs including reasonable attorneys' fees pursuant to 42 U.S.C.
2 § 1988, Title VII, and RLUIPA against each defendant jointly and
3 severally, or apportioned in the discretion of the court for all counts;
4 (h) Award punitive damages against each defendant for a sum to be proven at
5 trial;
6 (i) Award such other and further relief as this Court deems just and proper.

7 **REQUEST FOR JURY TRIAL**

8 Plaintiff McCollum and the Wiccan/Pagan Inmate Class request a jury trial.

9
10 Dated: December 21, 2005

RESPECTFULLY SUBMITTED,
JONES DAY

11
12
13 By: /s/
14 Caroline N. Mitchell

15 Attorneys for Plaintiffs
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